LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 22 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1962

No. 466

DANIELS & KENNEDY, INC.,

Petitioner,

against

A/S INGER and ILLINOIS ATLANTIC CORP.,

Respondents.

BRIEF FOR RESPONDENT A/S INGER IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

WARNER PYNE,
WILLIAM A. WILSON,
Counsel for Respondent A/S Inger,
116 John Street,
New York 38, New York.

INDEX

	PAGE
Statement	1
Argument in Opposition to the Petition	2
Conclusion	3

TABLE OF CASES

American Export Lines v. Revel, 4 Cir. 1959, 266 F. 2d 82	2
Calmar S. S. Corp. v. Nacirema Operating Co., 4 Cir. 1959, 266 F. 2d 79	2
Crumady v. The Joachim Hendrik Fisser, 358 U. S. 423	2
Royal Mail Lines, Ltd. v. Peck, 9 Cir. 1959, 269 F. 2d 857	2
Ryan Stevedoring Co. v. Pan-Atlantic S. S. Corp., 350 U. S. 124	2
Santomarco v. United States, 2 Cir. 1960, 277 F. 2d 255	2
Waterman S. S. Corp. v. Dugan & McNamara, Inc., 364 U. S. 421	2
Weyerhaeuser S. S. Co. v. Nacirema Operating Co., 355 U. S. 563	2

IN THE

Supreme Court of the United States

OCTOBER TERM 1962

No. 466

DANIELS & KENNEDY, INC.,

Petitioner,

against

A/S INGER and ILLINOIS ATLANTIC CORP.,

Respondents.

BRIEF FOR RESPONDENT A/S INGER IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Statement

Respondent A/S Inger opposes the petition for a writ of certiorari.

It does not, for present purposes, question the "Statement of the Case" given at pages 6 to 13 of the petition; indeed, it agrees that petitioner's statement, although in good measure argumentative, may be accepted on the consideration of the petition.

But petitioner's argument, in support of its contention that a writ should issue, fails even to suggest the existence of a conflict of determinations in the courts of appeal or of a substantial matter of federal law deserving of the attention of this Honorable Court under its certiorari powers.

For that reason it appears proper that the petition be denied.

Argument in Opposition to the Petition

I

The controlling principles of law applicable to stevedore warranty cases have been clearly defined, *Ryan Stevedoring Co.* v. *Pan-Atlantic S. S. Corp.*, 350 U. S. 124; *Weyerhaeuser S. S. Co.* v. *Nacirema Operating Co.*, 355 U. S. 563; *Crumady* v. *The Joachim Hendrik Fisser*, 358 U. S. 423; *Waterman S. S. Corp.* v. *Dugan & McNamara, Inc.*, 364 U. S. 421; and have been consistently applied by the courts of appeals, *e.g.*, *Santomarco* v. *United States*, 2 Cir. 1960, 277 F. 2d 255; *Calmar S. S. Corp.* v. *Nacirema Operating Co.*, 4 Cir. 1959, 266 F. 2d 79; *American Export Lines* v. *Revel*, 4 Cir. 1959, 266 F. 2d 82; *Royal Mail Lines, Ltd.* v. *Peck*, 9 Cir. 1959, 269 F. 2d 857.

The instant petition discloses no basis for contention that the judgment of the Court of Appeals is at variance with those principles.

The fallacy inherent in petitioner's argument is apparent. It is that a vessel owner, as respondent A/S Inger here, is to be considered a contractual supplier of equipment for the benefit of a stevedore, and is a warrantor, as to a stevedore, of the fitness of that equipment. Petitioner appears to argue that the vessel owner, and not the stevedore, is the expert in the loading and discharging of cargo and in the management and use of cargo gear and equipment.

The response of the Court of Appeals to that argument, when it was proposed below, fairly reflects its essential inconsistency with the substance of maritime-contractor warranty law (305 F. 2d 139 at 143; petition, pp. 33a, 34a):

> "Appellant argues, however, that the shipowner violated a contractual duty to the stevedores to supply them with proper winches. . . . As we have recently held in *Pettus* v. *Grace Line, Inc.*, *supra* [305 F. 2d

151], a shipowner's breach of contract in failing to supply adequate equipment to its stevedores is not sufficiently material to excuse the stevedores from the contractual duty to give proper service on which the indemnity claim is here based. The cases cited to us by the appellant dealing with the warranties of professional suppliers of equipment, e.g., *Booth S. S. Co. v. Meier & Oelhof Co.*, 262 F. 2d 310 (2 Cir., 1958), are wholly irrelevant to the question of the obligations of shipowners making equipment available to stevedores."

II

Petitioner's further point of argument (petition, pp. 30-33), that the clauses of the stevedore's contract with the cargo consignee bar implied-in-fact indemnity, does not seem to be amenable to review, in light of the District Court's findings (petition, pp. 19a, 20a, 22a), accepted by the Court of Appeals (305 F. 2d 139 at 141; petition, p. 30a), that the parties to that contract did not intend to make the shipowner a beneficiary of the specific indemnity clause and that the stevedore did not bargain for such limitation of its liability.

CONCLUSION

There appearing no reason why this Honorable Court should issue a writ of certiorari, it is prayed that the petition be denied.

New York, New York, October 19, 1962.

WARNER PYNE,
WILLIAM A. WILSON,
Counsel for Respondent, A/S Inger.